

Senate Engrossed

controlled substances monitoring program; delegates

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SENATE BILL 1091

AN ACT

AMENDING SECTIONS 36-2604 AND 36-2606, ARIZONA REVISED STATUTES; RELATING
TO THE CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2604, Arizona Revised Statutes, is amended to
3 read:

4 36-2604. Use and release of confidential information;
5 definitions

6 A. Except as otherwise provided in this section, prescription
7 information submitted to the board pursuant to this article is
8 confidential and is not subject to public inspection. The board shall
9 establish procedures to ensure the privacy and confidentiality of patients
10 and that patient information that is collected, recorded and transmitted
11 pursuant to this article is not disclosed except as prescribed in this
12 section.

13 B. The board or its designee shall review the prescription
14 information collected pursuant to this article. If the board or its
15 designee has reason to believe an act of unprofessional or illegal conduct
16 has occurred, the board or its designee shall notify the appropriate
17 professional licensing board or law enforcement or criminal justice agency
18 and provide the prescription information required for an investigation.
19 The board may delegate the duties prescribed in this subsection to the
20 executive director pursuant to section 32-1904.

21 C. The board may release data collected by the program to the
22 following:

23 1. A person who is authorized to prescribe or dispense
24 ~~a~~ controlled ~~substance~~ SUBSTANCES, or a delegate who is authorized by the
25 prescriber or dispenser, to assist that person to provide medical or
26 pharmaceutical care to a patient or to evaluate a patient OR TO ASSIST
27 WITH OR VERIFY COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER, THE RULES
28 ADOPTED PURSUANT TO THIS CHAPTER AND THE RULES ADOPTED BY THE DEPARTMENT
29 OF HEALTH SERVICES TO REDUCE OPIOID OVERDOSE AND DEATH.

30 2. An individual who requests the individual's own prescription
31 monitoring information pursuant to section 12-2293.

32 3. A medical practitioner regulatory board established pursuant to
33 title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 25 or 29.

34 4. A local, state or federal law enforcement or criminal justice
35 agency. Except as required pursuant to subsection B of this section, the
36 board shall provide this information only if the requesting agency states
37 in writing that the information is necessary for an open investigation or
38 complaint.

39 5. The Arizona health care cost containment system administration
40 and contractors regarding persons who are receiving services pursuant to
41 chapters 29 and 34 of this title OR TITLE XVIII OF THE SOCIAL SECURITY
42 ACT. Except as required pursuant to subsection B of this section, the
43 board shall provide this information only if the administration or a
44 contractor states in writing that the information is necessary for an open
45 investigation or complaint, OR for performing a drug utilization review
46 for controlled substances ~~to help combat~~ THAT SUPPORTS THE PREVENTION OF

1 opioid overuse or abuse ~~or for ensuring the continuity of care~~ AND THE
2 SAFETY AND QUALITY OF CARE PROVIDED TO THE MEMBER.

3 6. A HEALTH CARE INSURER. EXCEPT AS REQUIRED PURSUANT TO
4 SUBSECTION B OF THIS SECTION, THE BOARD SHALL PROVIDE THIS INFORMATION
5 ONLY IF THE HEALTH CARE INSURER STATES IN WRITING THAT THE INFORMATION IS
6 NECESSARY FOR AN OPEN INVESTIGATION OR COMPLAINT OR FOR PERFORMING A DRUG
7 UTILIZATION REVIEW FOR CONTROLLED SUBSTANCES THAT SUPPORTS THE PREVENTION
8 OF OPIOID OVERUSE OR ABUSE AND THE SAFETY AND QUALITY OF CARE PROVIDED TO
9 THE INSURED.

10 ~~6.~~ 7. A person who is serving a lawful order of a court of
11 competent jurisdiction.

12 ~~7.~~ 8. A person who is authorized to prescribe or dispense
13 ~~a~~ controlled ~~substance~~ SUBSTANCES and who performs an evaluation on an
14 individual pursuant to section 23-1026.

15 ~~8.~~ 9. A county medical examiner or alternate medical examiner who
16 is directing an investigation into the circumstances surrounding a death
17 as described in section 11-593 or a delegate who is authorized by the
18 county medical examiner or alternate medical examiner.

19 ~~9.~~ 10. The department of health services regarding persons who are
20 receiving or prescribing controlled substances in order to implement a
21 public health response to address opioid overuse or abuse, including a
22 review pursuant to section 36-198. Except as required pursuant to
23 subsection B of this section, the board shall provide this information
24 only if the department states in writing that the information is necessary
25 to implement a public health response to help combat opioid overuse or
26 abuse.

27 D. DATA PROVIDED BY THE BOARD PURSUANT TO THIS SECTION MAY NOT BE
28 USED FOR ANY OF THE FOLLOWING:

- 29 1. CREDENTIALING HEALTH CARE PROFESSIONALS.
- 30 2. DETERMINING PAYMENT.
- 31 3. PREEMPLOYMENT SCREENING.
- 32 4. ANY PURPOSE OTHER THAN AS SPECIFIED IN THIS SECTION.

33 ~~10.~~ E. The board may provide data to public or private entities for
34 statistical, research or educational purposes after removing information
35 that could be used to identify individual patients or persons who received
36 prescriptions from dispensers.

37 F. ANY EMPLOYEE OF THE ADMINISTRATION, A CONTRACTOR OR A HEALTH
38 CARE INSURER WHO IS ASSIGNED DELEGATE ACCESS TO THE PROGRAM SHALL OPERATE
39 UNDER THE AUTHORITY AND RESPONSIBILITY OF THE ADMINISTRATION'S,
40 CONTRACTOR'S OR HEALTH CARE INSURER'S CHIEF MEDICAL OFFICER OR OTHER
41 EMPLOYEE WHO IS A LICENSED HEALTH CARE PROFESSIONAL AND WHO IS AUTHORIZED
42 TO PRESCRIBE OR DISPENSE CONTROLLED SUBSTANCES. A DELEGATE OF THE
43 ADMINISTRATION, A CONTRACTOR OR A HEALTH CARE INSURER SHALL HOLD A VALID
44 LICENSE OR CERTIFICATION ISSUED PURSUANT TO TITLE 32, CHAPTER 7, 11, 13,
45 14, 15, 16, 17, 18, 19.1, 25, 29 OR 33 AS A CONDITION OF BEING ASSIGNED
46 AND PROVIDED DELEGATE ACCESS TO THE PROGRAM BY THE BOARD. EACH EMPLOYEE OF

1 THE ADMINISTRATION, A CONTRACTOR OR A HEALTH CARE INSURER WHO IS A
2 LICENSED HEALTH CARE PROFESSIONAL AND WHO IS AUTHORIZED TO PRESCRIBE OR
3 DISPENSE CONTROLLED SUBSTANCES MAY AUTHORIZE NOT MORE THAN TEN DELEGATES.

4 ~~F.~~ G. A person who is authorized to prescribe or dispense
5 ~~a~~ controlled ~~substance~~ SUBSTANCES or the chief medical officer OR OTHER
6 LICENSED HEALTH CARE PROFESSIONAL of the administration, ~~or~~ a contractor
7 OR A HEALTH CARE INSURER WHO IS AUTHORIZED TO PRESCRIBE OR DISPENSE
8 CONTROLLED SUBSTANCES shall deactivate a delegate within five business
9 days after an employment status change, the request of the delegate or the
10 inappropriate use of the controlled substances prescription monitoring
11 program's central database tracking system.

12 ~~F.~~ H. For the purposes of this section:

13 1. "Administration" and "contractor" have the same meanings
14 prescribed in section 36-2901.

15 2. "Delegate" means any of the following:

16 (a) A licensed health care professional who is employed in the
17 office of or in a hospital with the prescriber or dispenser.

18 (b) An unlicensed medical records technician, medical assistant or
19 office manager who is employed in the office of or in a hospital with the
20 prescriber or dispenser and who has received training regarding both the
21 health insurance portability and accountability act privacy standards (45
22 Code of Federal Regulations part 164, subpart E) and security standards
23 (45 Code of Federal Regulations part 164, subpart C).

24 (c) A forensic pathologist, medical death investigator or other
25 qualified person who is assigned duties in connection with a death
26 investigation pursuant to section 11-594.

27 (d) A licensed pharmacy technician trainee, pharmacy technician or
28 pharmacy intern who works in a facility with the dispenser.

29 (e) Any employee of the administration, ~~or~~ a contractor OR A HEALTH
30 CARE INSURER who is authorized by the administration's, ~~or~~ contractor's OR
31 HEALTH CARE INSURER'S chief medical officer OR OTHER LICENSED HEALTH CARE
32 PROFESSIONAL WHO IS AUTHORIZED TO PRESCRIBE OR DISPENSE CONTROLLED
33 SUBSTANCES.

34 3. "HEALTH CARE INSURER" HAS THE SAME MEANING PRESCRIBED IN SECTION
35 20-3151.

36 Sec. 2. Section 36-2606, Arizona Revised Statutes, is amended to
37 read:

38 36-2606. Registration; access; requirements; mandatory use;
39 annual user satisfaction survey; report;
40 definitions

41 A. A medical practitioner regulatory board shall notify each
42 medical practitioner who receives an initial or renewal license and who
43 intends to apply for registration or has an active registration under the
44 controlled substances act (21 United States Code sections 801 through 904)
45 of the medical practitioner's responsibility to register with the Arizona
46 state board of pharmacy and be granted access to the controlled substances

1 prescription monitoring program's central database tracking system. The
2 Arizona state board of pharmacy shall provide access to the central
3 database tracking system to each medical practitioner who has a valid
4 license pursuant to title 32 and who possesses an Arizona registration
5 under the controlled substances act (21 United States Code sections 801
6 through 904). The Arizona state board of pharmacy shall notify each
7 pharmacist of the pharmacist's responsibility to register with the Arizona
8 state board of pharmacy and be granted access to the controlled substances
9 prescription monitoring program's central database tracking system. The
10 Arizona state board of pharmacy shall provide access to the central
11 database tracking system to each pharmacist who has a valid license
12 pursuant to title 32, chapter 18 and who is employed by EITHER:

13 1. A facility that has a valid United States drug enforcement
14 administration registration number.

15 2. THE ADMINISTRATION, A CONTRACTOR OR A HEALTH CARE INSURER AND
16 WHO HAS A NATIONAL PROVIDER IDENTIFIER NUMBER.

17 B. The registration is:

18 1. Valid in conjunction with a valid United States drug enforcement
19 administration registration number and a valid license issued by a medical
20 practitioner regulatory board established pursuant to title 32, chapter 7,
21 11, 13, 14, 15, 16, 17, 25 or 29.

22 2. Valid in conjunction with a valid license issued by the Arizona
23 state board of pharmacy for a pharmacist who is employed by EITHER:

24 (a) A facility that has a valid United States drug enforcement
25 administration registration number.

26 (b) THE ADMINISTRATION, A CONTRACTOR OR A HEALTH CARE INSURER AND
27 WHO HAS A NATIONAL PROVIDER IDENTIFIER NUMBER.

28 3. Not transferable or assignable.

29 C. An applicant for registration pursuant to this section must
30 ~~submit an application~~ APPLY as prescribed by the board.

31 D. Pursuant to a fee prescribed by the board by rule, the board may
32 issue a replacement registration to a registrant who requests a
33 replacement because the original was damaged or destroyed, because of a
34 change of name or for any other good cause as prescribed by the board.

35 E. A person who is authorized to access the controlled substances
36 prescription monitoring program's central database tracking system may do
37 so using only that person's assigned identifier and may not use the
38 assigned identifier of another person.

39 F. Beginning the later of October 1, 2017 or sixty days after the
40 statewide health information exchange has integrated the controlled
41 substances prescription monitoring program data into the exchange, a
42 medical practitioner, before prescribing an opioid analgesic or
43 benzodiazepine controlled substance listed in schedule II, III or IV for a
44 patient, shall obtain a patient utilization report regarding the patient
45 for the preceding twelve months from the controlled substances
46 prescription monitoring program's central database tracking system at the

1 beginning of each new course of treatment and at least quarterly while
2 that prescription remains a part of the treatment. Each medical
3 practitioner regulatory board shall notify the medical practitioners
4 licensed by that board of the applicable date. A medical practitioner may
5 be granted a one-year waiver from the requirement in this subsection due
6 to technological limitations that are not reasonably within the control of
7 the practitioner or other exceptional circumstances demonstrated by the
8 practitioner, pursuant to a process established by rule by the Arizona
9 state board of pharmacy.

10 G. Before a pharmacist dispenses or before a pharmacy technician or
11 pharmacy intern of a remote dispensing site pharmacy dispenses a schedule
12 II controlled substance, a dispenser shall obtain a patient utilization
13 report regarding the patient for the preceding twelve months from the
14 controlled substances prescription monitoring program's central database
15 tracking system at the beginning of each new course of treatment. ~~The~~
16 ~~Arizona state board of pharmacy shall establish a process to provide to a~~
17 ~~dispenser a waiver for up to one year after the effective date of this~~
18 ~~amendment to this section from the requirement in this subsection due to~~
19 ~~technological limitations that are not reasonably within the control of~~
20 ~~the dispenser or other exceptional circumstances as demonstrated by the~~
21 ~~dispenser.~~

22 H. The medical practitioner or dispenser is not required to obtain
23 a patient utilization report from the central database tracking system
24 pursuant to subsection F of this section if any of the following applies:

25 1. The patient is receiving hospice care or palliative care for a
26 serious or chronic illness.

27 2. The patient is receiving care for cancer, a cancer-related
28 illness or condition or dialysis treatment.

29 3. A medical practitioner will administer the controlled substance.

30 4. The patient is receiving the controlled substance during the
31 course of inpatient or residential treatment in a hospital, nursing care
32 facility, assisted living facility, correctional facility or mental health
33 facility.

34 5. The medical practitioner is prescribing the controlled substance
35 to the patient for ~~no~~ NOT more than a five-day period for an invasive
36 medical or dental procedure or a medical or dental procedure that results
37 in acute pain to the patient.

38 6. The medical practitioner is prescribing the controlled substance
39 to the patient for ~~no~~ NOT more than a five-day period for a patient who
40 has suffered an acute injury or a medical or dental disease process that
41 is diagnosed in an emergency department setting and that results in acute
42 pain to the patient. An acute injury or medical disease process does not
43 include back pain.

44 I. If a medical practitioner or dispenser uses electronic medical
45 records that integrate data from the controlled substances prescription
46 monitoring program, a review of the electronic medical records with the

1 integrated data shall be deemed compliant with the review of the program's
2 central database tracking system as required in subsection F of this
3 section.

4 J. The board shall promote and enter into data sharing agreements
5 ~~for the purpose of integrating~~ TO INTEGRATE the controlled substances
6 prescription monitoring program into electronic medical records.

7 K. By complying with this section, a medical practitioner or
8 dispenser ~~acting~~ WHO ACTS in good faith, or the medical practitioner's or
9 dispenser's employer, is not subject to liability or disciplinary action
10 arising solely from either:

11 1. Requesting or receiving, or failing to request or receive,
12 prescription monitoring data from the program's central database tracking
13 system.

14 2. Acting or failing to act on the basis of the prescription
15 monitoring data provided by the program's central database tracking
16 system.

17 L. Notwithstanding any provision of this section to the contrary,
18 medical practitioners or dispensers and their delegates are not in
19 violation of this section during any time period in which the controlled
20 substances prescription monitoring program's central database tracking
21 system is suspended or is not operational or available in a timely manner.
22 If the program's central database tracking system is not accessible, the
23 medical practitioner or dispenser or the medical practitioner's or
24 dispenser's delegate shall document the date and time the practitioner,
25 dispenser or delegate attempted to use the central database tracking
26 system pursuant to a process established by board rule.

27 M. The board shall conduct an annual voluntary survey of program
28 users to assess user satisfaction with the program's central database
29 tracking system. The survey may be conducted electronically. On or
30 before December 1 of each year, the board shall provide a report of the
31 survey results to the president of the senate, the speaker of the house of
32 representatives and the governor and shall provide a copy of this report
33 to the secretary of state.

34 N. This section does not prohibit a medical practitioner regulatory
35 board or the Arizona state board of pharmacy from obtaining and using
36 information from the program's central database tracking system.

37 O. For the purposes of this section:

38 1. "ADMINISTRATION" HAS THE SAME MEANING PRESCRIBED IN SECTION
39 36-2901.

40 2. "CONTRACTOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2901.

41 ~~1-~~ 3. "Dispenser" means a pharmacist who is licensed pursuant to
42 title 32, chapter 18.

43 ~~2-~~ 4. "Emergency department" means the unit within a hospital that
44 is designed ~~for the provision of~~ TO PROVIDE emergency services.

45 5. "HEALTH CARE INSURER" HAS THE SAME MEANING PRESCRIBED IN SECTION
46 20-3151.